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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/772,581

02/05/2004

Brian P. Carney

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2269

7590

05/03/2006

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EXAMINER

OKEZIE, ESTHER O

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/772,581	<b>Applicant(s)</b> CARNEY, BRIAN P.	
	<b>Examiner</b> Esther O. Okezie	<b>Art Unit</b> 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

The amendment filed on 2/03/06 and the remarks presented therewith have been carefully considered. Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1,2,4-8,10,11,14-18 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Application Publication 2004/009478 to Bryan Netsch.
2. Re claim 1, Netsch discloses a bellows scoop capable of retaining and carrying mortar, comprising: a substantially flat piece of material defining an upper holding surface area being continuously contoured in a dished-out manner to facilitate the retention and carrying of mortar (figs 2-4), wherein the dished-out holding surface area has a lowermost portion that has a maximum depth of less

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than about 3 inches (the wall sections of the scoop range between 4.5 to 6.5 millimeters; paragraph 15-16).

1. Re claim 2, further including a carrying handle (12).
3. Re claim 4, the lowermost portion of the dished out surface is recessed less than about 1 inch (the wall sections of the scoop range between 4.5 to 6.5 millimeters; paragraph 15-16).
4. Re claim 5, the lowermost portion of the holding surface is recessed less than about 0.5 inches (the wall sections of the scoop range between 4.5 to 6.5 millimeters; paragraph 15-16).
5. Re claim 6, the lowermost portion of the holding surface is recessed less than about 0.375 inches (the wall sections of the scoop range between 4.5 to 6.5 mm; paragraph 15-16).
6. Re claim 7, the material includes two side edges and a bottom edge, and the holding surface area extends to the side and bottom edges of the material (figs 5 and 6).
7. Re claim 8, further including a carrying handle (44 or 50).
8. Re claim 10, the material includes two side edges and a bottom edge, and the holding surface area is separated from the side and bottom edges of the material by raised peripheral lip portions (48).
9. Re claim 11, the holding surface area that is adjacent to the raised peripheral lip portions (see adjacent wall sections 16 forming bellows 14) is recessed from the peripheral lip portions by less than about 0.5 inches (the wall sections of the scoop range between 4.5 to 6.5 mm; paragraph 14-16).

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10. Re claims 14 and 15, the scoop is formed from a polymer material

(paragraph 14)

11. Re claim 16, wherein the mortarboard has an outermost thickness that is less than about 1 inch (the scoop height ranges from 2.5 to 12.5 millimeters)

12. Re claim 17, the scoop is substantially rectangular in shape (fig 6; paragraph 12)

13. Re claim 18, the material is capable of nesting together at a front and rear surface when more than one scoops are stacked together.

14. Claims 19-21,27, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Design Patent 113,023 to Tabb.

15. Re claim 19, Tabb discloses a tray capable of retaining and carrying mortar, the mortarboard comprising: a generally flat piece of material (figs 2 and 3) an upper holding surface area able to retain and carry mortar; and wherein the material defines a cut-out area portion extending through said material configures to from a carrying handle (fig. 1).

16. Re claim 20, the upper holding surface is substantially flat (figs 1-3).

17. Re claim 21, the material includes two side edges and a bottom edge, and the holding surface area is separated from the side and bottom edges of the material by raised peripheral lip portions (fig 1).

18. Re claim 27, the tray is substantially rectangular in shape.

19. Re claim 28, the tray is capable of nesting together at a front and rear surface when more than one trays of like construction are stacked together.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Netsch in view of Tabb. Netsch does not disclose a cutout area portion extending through said material configured to form a carrying handle. Tabb discloses a tray including cutout area portions forming handles (fig 1). It would have been obvious to one of ordinary skill at the time of the invention to modify the handle of Netsch as taught by Tabb to form a cut out area portion for the user to easily grip the device.

21. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Netsch in view of Malvasio. Netsch teaches a bottom surface (24) but does not disclose the material includes supporting ribs formed integrally with the material. Malvasio discloses a lightweight and strength reinforced taco plate with reinforcing ribs (12) built into the plate. Netsch and Malvasio are analogous art because they both include support of various articles by a tray surface and are capable of supporting, carrying, and retaining mortar. It would have been obvious to one of ordinary skill at the time of the invention to modify the device of Netsch as taught by Malvasio to include reinforcing ribs formed integrally into the device

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in order to "... strength-reinforce the plate and protect it from abnormal twisting or certain bending..." (Malvasio: col. 2, lines 50-56).

22. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Netsch in view of US Patent Application Publication 2004/0150236 A1 of Hobel et al. Netsch discloses a bottom surface (24) but does not disclose the bottom surface configured to accommodate a support stand. Hobel et al discloses a mixing palette including a bottom surface that is configured to accommodate a support stand (see figs 4a, 4b, and 5 for palette on support stand). It would have been obvious to one of ordinary skill at the time of the invention to modify the device of Netsch to include a bottom surface configured to accommodate support on a support stand in order to support the device during use.

23. Claims 22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tabb. Tabb discloses the raised peripheral lip is adjacent to the holding surface area, but Tabb does not disclose the dimensions of the tray. It would have been obvious to one of ordinary skill at the time of the invention to design the tray with dimensions that would accommodate articles being supported on the upper holding surface.

24. Claims 22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tabb. Tabb does not disclose what material the tray is made from. It would have been obvious to one of ordinary skill at the time of the invention to form the tray from a polymer in order to make the tray lightweight and in order to be easily carried, since it has been held to be in the general skill

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of a worker in the art to select a known material on the basis of its suitability for intended use.

25. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tabb in view of Malvasio. Tabb teaches a bottom surface but does not disclose the material includes supporting ribs formed integrally with the material. Malvasio discloses a lightweight and strength reinforced taco plate with reinforcing ribs (12) built into the plate. It would have been obvious to one of ordinary skill at the time of the invention to modify the device of Tabb as taught by Malvasio to include reinforcing ribs formed integrally into the device in order to "... strength-reinforce the plate and protect it from abnormal twisting or certain bending..." (Malvasio: col. 2, lines 50-56).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is



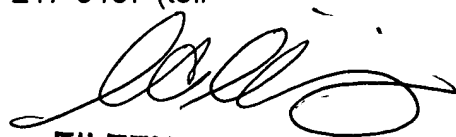
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filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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